IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.Rev.Pet.No. 619 of 2000()

CRMP.717/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA

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REVN. PETITIONER(S):

K.T.PRAKASHAN, KALANGATH HOUSE,
KUSUMAGIRI P.O.
KAKKANADU, KOCHI 682 030.

BY ADV. SRI.M.K.DILEEPAN
SRI.DEEPAK T.NEDUNGADAN

RESPONDENT(S):

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1. MR.K.SADANANDAN, KOLLAMPARAMBIL HOUSE,
NEAR MATTE TEMPLE,
PERUMBADAPPUM KOZHI 6.

2. STATE REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

ADV. SRI.T.K.RADHAKRISHNAN FOR R1
SMT.K.L.SREEDEVI FOR R1
PUBLIC PROSECUTOR SRI.SURESH KUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12.3.2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.R.P. No.619 of 2000

Dated 12th March, 2007

O R D E R

A complaint filed by the revision petitioner alleging offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act') was dismissed and hence this revision.

2. On filing the complaint, the sworn statement of the complainant was recorded and thereafter, on 25.3.2000, the complaint was dismissed stating that the complainant was absent and there was no application. The said order is under challenge in this revision on various grounds.

3. At the time of hearing, the revision petitioner and the counsel were absent. The only ground stated in the revision memo is that the court below went wrong in dismissing the complaint on the date posted for appearance of the accused, after issuing summons. According to the revision petitioner, the court ought to have adjourned the case giving opportunity to the complainant to appear.

4. A perusal of the records show that the complaint

was taken on file and the sworn statement of the complainant was also recorded in June, 2000. Adjournments were granted and thereafter, on 25.3.2000 the complaint was dismissed holding that the complainant was absent and there was no application. It appears that the Magistrate dismissed the complaint under Section 203 of the Code of Criminal Procedure (for short, 'the Code'). It is seen from the records that summons was ordered against the accused and the case was posted for accused's appearance.

5. A reading of Section 203 shows that the court has to consider the statement of the complainant and the witnesses and the result of investigation or enquiry, if any, under Section 202 of the Code before dismissing the complaint under Section 203 of the Code. If, after considering the sworn statement of the complainant and the witnesses if any, or the enquiry, if any, the Magistrate is of opinion that there is no sufficient ground for proceeding he may dismiss the complaint. In such case, he shall briefly state the reasons also.

6. But the court below has not considered the sworn

statement of the complainant which was recorded by him. Without consideration of the statement, the court shall not proceed under Section 203 of the Code to dismiss the complaint. The Magistrate is also bound to record reasons that there is no sufficient ground for proceeding and then alone a complaint can be dismissed under Section 203 of the Code. Having not recorded reasons for dismissing complaint, the order under challenge cannot be sustained.

7. In the result, order under challenge is set aside. The trial court is directed to take the case on file and proceed in accordance with law.

This petition is allowed.

K.HEMA, JUDGE.

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